



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 2, 1994

Mr. Charles Karakashian, Jr.  
Assistant General Counsel  
Legal Services  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, TX 78773-0001

OR94-430

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25217.

The Texas Department of Public Safety received an open records request on March 4, 1994, for information regarding the outcome of a lawsuit styled *Jacobs v. Davis*, including the terms of the settlement. You requested a decision from this office on March 18, 1994. Consequently, you failed to request a decision within the 10 days required by section 552.301(a).


Section 552.301 through section 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

You claim that the settlement agreement requested is excepted from disclosure by common-law privacy as recognized by section 552.101 and by section 552.107(2). Under common-law privacy, information may be withheld if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977). Section 552.107(2) excepts from disclosure information if "a court by order has prohibited disclosure of the information." Thus, the terms of a final settlement agreement executed by a governmental body are not excepted from disclosure by section 552.107(2) unless the court enters an order prohibiting the parties to the agreement or their attorneys from disclosing this information. Open Records Decision Nos. 415 (1984) at 2; 114 (1975).

In this case, we conclude that you have not demonstrated a compelling interest to withhold the information. Neither section 552.101 nor section 552.107(2) except the settlement agreement from disclosure. Although the lawsuit may have involved information that would be protected by common-law privacy, none of this information is revealed in the settlement agreement. Therefore, you may not withhold the settlement agreement under section 552.101. Furthermore, while the settlement agreement contains a confidentiality provision, the court order merely dismisses the suit. The order does not mention sealing or making confidential any part of the settlement agreement, nor does it explicitly incorporate the terms of the settlement agreement into the order.<sup>1</sup> Finally, we have previously ruled that this settlement agreement may not be withheld under section 552.107(2) in Open Records Letter No. 94-246 (1994). Therefore, you may not withhold the settlement agreement under section 552.107(2).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink that reads "Margaret A. Roll". The signature is fluid and cursive, with the first name "Margaret" and last name "Roll" being the most prominent parts.

Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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<sup>1</sup>We also note that rule 76a of the Texas Rules of Civil Procedure places both procedural and substantive restrictions on a Texas court's authority to seal court records, including settlement agreements.

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Enclosures: Submitted documents

cc: Ms. Cynthia Puckett  
Reporter  
Amarillo Globe-News  
P.O. Box 2091  
Amarillo, Texas 79166  
(w/o enclosures)